21453

No. 454.

MAR 25 1901
JAMES

By. of Boyle & McDermo

Supreme Court of the United States.

Filed March 25, 1901.

THE FIDELITY AND DEPOSIT COMPANY OF MARYLAND, - - - - - - - - *Plaintiff in Error,*

VERSUS

R. H. COURTNEY, RECEIVER GERMAN NATIONAL BANK, - - - - - - - *Defendant in Error.*

MOTION AND GROUNDS FOR THE SAME.

ST. JOHN BOYLE AND
EDWARD J. McDERMOTT,
Counsel for Plaintiff in Error.

W. M. SMITH,
Counsel for Defendant in Error.

JOHN P. MORTON & CO., PRINTERS, LOUISVILLE, KY.

21454

—IN THE—

Supreme Court of the United States.

THE FIDELITY AND DEPOSIT COMPANY OF MARYLAND, ... *Plaintiff in Error,*

VERSUS No. 454.

R. H. COURTNEY, Receiver, ... *Defendant in Error.*

MOTION.

Now comes the plaintiff in error and files herein a stipulation signed by all counsel interested and moves the Court to advance this case for hearing with the case of the Guarantee Company of North America vs. The Mechanics Savings Bank & Trust Company, No. 261, and to grant two hours' additional time to the counsel for the plaintiff in error herein and two hours' additional time for the defendant in error herein for the argument.

ST. JOHN BOYLE AND
EDWARD J. MCDERMOTT,
Counsel for Plaintiff in Error.

—IN THE—

Supreme Court of the United States.

THE FIDELITY AND DEPOSIT COMPANY OF MARYLAND, ... *Plaintiff in Error,*

VERSUS No. 454.

R. H. COURTNEY, Receiver, ... *Defendant in Error.*

STIPULATION.

It is agreed by the counsel herein that this case may be advanced, and heard and argued together with the case of the Guarantee Company of North America vs. The Mechanics Savings Bank & Trust Company, No. 261, if the Court will allow us at least one hour additional time on each side for the proper argument of this case.

ST. JOHN BOYLE AND
EDWARD J. MCDERMOTT,
Counsel for Plaintiff in Error.
W. M. SMITH,
Counsel for Defendant in Error.

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—IN THE—

Supreme Court of the United States.

THE FIDELITY AND DEPOSIT COMPANY OF MARYLAND, ... *Plaintiff in Error,*

VERSUS No. 454

R. H. COURTNEY, Receiver, ... *Defendant in Error.*

STIPULATION.

It is agreed by the counsel for the plaintiff and defendant in error in the case of the Guarantee Company of North America vs. The Mechanics Savings Bank & Trust Company, No. 261, that the case of the Fidelity & Deposit Company of Maryland vs. R. H. Courtney, Receiver, may be heard and argued together with said case of the Guarantee Company of North America vs. The Mechanics Savings Bank & Trust Company, if the Court will allow counsel therein such additional time as may be necessary for the proper argument thereof without restricting the time allowed us by the rules.

GUARANTEE COMPANY OF N. A.,
By WM. L. GRANBERRY, Attorney.

While I think I have nothing to do with this matter, it being purely a matter of discretion with the Court, I assent to it.

EDWARD H. EAST,
Attorney for Mechanics Savings Bank & Trust Co., etc.

Supreme Court of the United States.

THE FIDELITY AND DEPOSIT COMPANY OF MARYLAND, ... *Plaintiff in Error,*

VERSUS **No. 454**

R. H. COURTNEY, RECEIVER GERMAN NATIONAL BANK, ... *Defendant in Error.*

GROUNDS FOR MOTION.

The motion to advance this case and to have the same heard with the case of the Guarantee Company of North America vs. The Mechanics Savings Bank & Trust Company, for the use of James J. Pryor, Assignee, etc., No. 261, is made because several of the questions involved in the one case are also involved in the other; and, to hear the cases together, will save the Court time and labor. The main issues involved are of so much importance that they should be thoroughly argued and be finally and systematically determined for the guidance of all persons interested in bonds executed by bond-companies.

Both cases involve the following questions:

1. What degree of care or diligence is required of an employer to prevent defaults after he has agreed that he "shall observe, or cause to be observed, all due and customary supervision over the said employe for the prevention of default?"

2. What degree of information or knowledge of officers and directors of a bank of misconduct or default of an employe is sufficient to make it necessary for the Bank to give notice to a surety when the Bank has agreed to give notice of any misconduct or default that would make the surety liable?

3. If a surety, before renewing a bond for another year, asks whether the employe's accounts have been examined and his services have been faithful and satisfactory, and the surety is informed by the Cashier or President of the Bank not in collusion with the employe that his accounts have been examined, that they are correct, and that his duties have been faithfully and satisfactorily performed, when, in fact, he has been guilty of defaults which were either known to the other officers or directors or might by the exercise of ordinary care have been known to them, is the surety released?

4. If a Cashier or President or Director of a Bank knows or has reasonable ground to believe that another employe has been guilty of a default, or of such misconduct as would increase the risk of the surety, and, notwithstanding an agreement by the bank to give immediate notice of such default or misconduct, the Bank does not give any notice thereof to the Surety, is the surety released?

5. When the terms and meanings of a bond-contract are clear, has a paid surety or a bond-company the same rights, and can such surety be exonerated by the same defenses that will protect an unremunerated surety?

6. Is the knowledge of a President or a Director of a Cashier's defaults, or is the knowledge of a Cashier or a Director of a President's defaults the knowledge of the Bank, when there is no collusion between the offender and the officer having such knowledge, and when this knowledge is obtained at the Bank or in attending to the Bank's business?

7. When the surety writes to a bank for information as to the Cashier's discharge of his duties and receives a reply from the President that the Cashier has faithfully discharged his duties, or when information is asked as to the President and the Cashier replies that the President has faithfully discharged his duties, and when this information is known by the writer to be false, or, by the exercise of ordinary care, would be known to be false, and when there is nevertheless no collusion between the defaulting officer and the officer

sending the reply, is the letter received by the surety competent evidence? Or is there any difference in this respect between (1) a letter written by a President and (2) a letter written by a Cashier? Or by whom shall the letter be written to bind the bank? Is formal action of the Board of Directors authorizing such a letter necessary to make such a letter binding on the bank?

In addition to the foregoing questions common to both cases there are several questions in the case of the Fidelity & Deposit Company not in the case of the Guarantee Company of North America. For instance, in the former's case it is earnestly contended that the employer, in violation of the plain terms of its contract, (1) did not give immediate notice of the President's defaults as soon as the defaults were known, nor even give immediate notice after the receiver of the bank knew of them, and, (2) the receiver did not "file with the (surety) company his or their claim hereunder with full particulars thereof, as soon as practicable thereafter, etc.;" but, on the contrary, the Receiver delayed his so-called "immediate notice" not less than two or three weeks, and delayed his "claim" about four months and a half after the written notice had been given, and four months after taking an attachment against the defaulting officer.

There are other questions peculiar to the case of the Fidelity & Deposit Company, but they need not now be mentioned.

In order that all these questions may be heard with as little loss of the Court's time and effort as possible, we respectfully ask that these cases be heard together, and that additional time be granted to the counsel in this case.

Respectfully submitted,

ST. JOHN BOYLE AND
EDWARD J. MCDERMOTT,
Counsel for Plaintiff in Error.